

CITY CLERK
(712) 328-4616

COUNCIL AGENDA, CITY OF COUNCIL BLUFFS, IOWA
REGULAR MEETING NOVEMBER 24, 2008, 7:00 P.M.
COUNCIL CHAMBERS, 2ND FLOOR, CITY HALL
209 PEARL STREET

ADDENDUM TO AGENDA

Add:

5. RESOLUTIONS:

- E. Resolution 08-356, authorizing the Mayor to execute a document entitled "Consent to Transfer" to assist in the transfer of property between Union Pacific Railroad, Midwest Walnut and Red Giant Oil

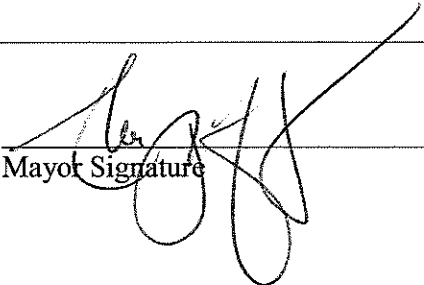


Council Communication

Department: Legal	Ordinance No. Resolution No. <u>08-356</u>	Date: <u>November 24, 2008</u>
Case/Project No.		
Applicant		
SUBJECT/TITLE		
A resolution authorizing the Mayor to sign a "Consent to Transfer" document.		
BACKGROUND		
The Consent to Transfer doesn't transfer any interest in City property but will accommodate the transfer of property between Union Pacific Railroad, Midwest Walnut and Red Giant Oil.		
RECOMMENDATION		
Approval of this resolution is recommended.		

Richard Wade

Department Head Signature



Mayor Signature

SE

PREPARED BY: City Legal Department, 209 Pearl Street, Council Bluffs, IA 51503
RETURN TO: City Clerk, 209 Pearl Street, Council Bluffs, IA 51503

RESOLUTION NO. 08-356

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A DOCUMENT ENTITLED "CONSENT TO TRANSFER" TO ASSIST IN THE TRANSFER OF PROPERTY BETWEEN UNION PACIFIC RAILROAD, MIDWEST WALNUT AND RED GIANT OIL.

WHEREAS, a "Consent to Transfer" document has been prepared dealing with the transfer of property between the Union Pacific Railroad, Midwest Walnut and Red Giant Oil Company; and

WHEREAS, this consent to transfer specifically includes, but is not limited to, those places where track crosses South Third Street, 18th Avenue, 19th Avenue, High Street, Tostevin and South Avenues.

NOW, THEREFORE, BE IT RESOLVED

BY THE CITY COUNCIL

OF THE

CITY OF COUNCIL BLUFFS, IOWA

That the Mayor is hereby authorized and directed to execute the document entitled "Consent to Transfer" and attached as Exhibit A.

ADOPTED
AND
APPROVED November 24, 2008

Thomas P. Hanafan, Mayor

ATTEST: _____
Judith Ridgeley, City Clerk

C.A. 11/24/08

CONSENT TO TRANSFER

This Consent to Transfer is made this ____ day of November, 2008 by the City of Council Bluffs, Iowa, a Municipal Corporation. Comes now the undersigned City of Council Bluffs, Iowa and hereby acknowledges, grants, and conveys to Red Giant Oil Company, an Iowa Corporation, and its successors in interest, its consent to the following:

The City of Council Bluffs, Iowa hereby Consents to the transfer of real estate, including the transfer of all easements and encumbrances of record, pertaining to the real estate situated in Council Bluffs, Pottawattamie, County, Iowa, as described in Exhibit A, hereto attached and hereby made a part hereof (the "Property"), which Property is to be used by the Grantee for any and all railroad purposes incidental or related thereto, together with the right of ingress and egress to and from the Property for the purpose of exercising the rights therein granted.

This consent to transfer specifically includes but is not limited to those places where the track crosses South Third Street, Eighteenth Avenue, Nineteenth Avenue, High Street, and Tostevin Avenue/South Avenue.

IN WITNESS WHEREOF, the City of Council Bluffs, Iowa has duly executed this Consent to Transfer as of the Date first above written.

Attest:

City of Council Bluffs, Iowa

By _____

Mayor Thomas P. Hanafan

(Seal)

ACKNOWLEDGMENT

State of Iowa)
)ss.
County of Pottawattamie)

On this _____ day of _____, 2008, before me, A Notary Public in and for said County and State, personally appeared Thomas P. Hanafan, who is currently the Mayor of the City of Council Bluffs, Iowa, a municipal corporation of the State of Iowa, and who is personally know to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to in the within instrument, and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public in and for the State of Iowa

Return To: William Hughes, Esq, Stuart Tinley Law Firm, LLP, Qwest Building, 310 W. Kanesville Blvd., 2nd Floor, P.O. Box 398, Council Bluffs, Iowa 51502-0398
Preparer: Steven J. Woolley, Esq., McGill, Gotsdiner, Workman & Lepp, P.C., L.L.O., 11404 West Dodge Road, Suite 500, Omaha, Nebraska 68154-2584
Taxpayer: Red Giant Oil Company, a Nebraska corporation authorized to do business in Iowa, 1701 South 3rd Street, Council Bluffs, Iowa 51503

QUIT CLAIM DEED

For the consideration of One Dollar and other valuable consideration, Midwest Walnut Company of Iowa, an Iowa corporation, does hereby Quit Claim to Red Giant Oil Company, a Nebraska corporation authorized to do business in Iowa, all of its right, title, interest, estate, claim and demand in the following real estate in Pottawattamie County, Iowa, including all easement rights and interests therein:

See Exhibit "A" attached hereto and incorporated herein by this reference.

Words and phrases herein, including acknowledgement hereof, shall be construed as in the singular or plural number, and as masculine or feminine gender, according to the context.

Dated: _____, 2008

MIDWEST WALNUT COMPANY OF IOWA,
an Iowa corporation, Grantor

By: Gerald W. Keller, Chief Operating Officer

NOTE: Consideration less than \$500.00

STATE OF IOWA)
) ss.
COUNTY OF POTTAWATTAMIE)

This instrument was acknowledged before me on _____, 2008, by Gerald W. Keller as Chief Operating Officer of Midwest Walnut Company of Iowa, an Iowa corporation.

Notary Public

EXHIBIT "A"

PARCEL 1:

A parcel of land located in part of Lots 6 and 7; Block 5 of the Casady's Addition to the City of Council Bluffs, Pottawattamie County, Iowa, more particularly described as follows:

Commencing at the southwest corner of said Lot 7; thence North 0°32'10" West, along the East right of way line of vacated High Street and along the west line of said Lot 7, a distance of 30.79 feet to the Point of Beginning; thence continuing North 0°32'10" West, along said east right of way line and along the west line of said Lot 7, a distance of 40.02 feet to a point on the southwesterly right of way line of the Chicago and North Western Railway Company, predecessor to Union Pacific Railroad Company; thence South 40°52'00" East, along said southwesterly right of way line, a distance of 178.88 feet; thence North 50°46'11" West a distance of 150.62 feet to the Point of Beginning.

Containing 0.053 acres more or less

PARCEL 2:

Also A parcel of land located in part of Lots 1, 12, 13, 14, 15 and 16, all in Block 6 of Casady's Addition, Council Bluffs, Pottawattamie County, Iowa, more particularly described as follows:

Commencing at the northeast corner of said Lot 1 and Point of Beginning; thence South 0°32'10" East, along the west right of way line of vacated High Street and along the east line of said Lot 1, a distance of 65.81 feet to a point on a non-tangent curve concave southwesterly and having a radius of 457.46 feet and a central angle of 29°36'34", a radial line through said point bears North 29°02'21" East; thence northwesterly, along said curve, an arc length of 236.41 feet and having a chord bearing and distance of North 75°45'56" West, 233.78 feet to the end of said curve; thence South 89°25'47" West a distance of 164.94 feet to the Beginning of a tangent circular curve concave northeasterly and having a radius of 497.46 feet and a central angle of 9°11'13"; thence northwesterly, along said curve, an arc length of 79.76 feet and having a chord bearing and distance of North 85°58'37" West, 79.68 feet to a point on the east right of way line of vacated 3rd Street and also, being the west line of said Lot 12; thence north 0°36'02" West, along said east right of way line and along the west line of said Lot 12, a distance of 0.89 feet to the northwest corner of said Lot 12; thence North 89°34'34" East, along the south right of way line of 18th Avenue and along the north line of said Block 6, a distance of 470.43 feet to the Point of Beginning.

Containing 0.169 acres more or less

NOTE: Parcels 1 and 2 as described above are one and the same parcels of land as described on the Exhibit A attached to the Easement Deed dated December 10, 1999, by and between Midwest Walnut Company, grantor, and Union Pacific Railroad Company, grantee, recorded on September 20, 2000, in the office of the Recorder of Pottawattamie County, Iowa at Book 101, Page 13179 ("Easement Deed"), and as Parcels "A" and "B" as described on the Plat of Survey

attached to the Easement Deed which is dated October 21, 1999, and was prepared by Carl H. Rogers, Jr.

PARCEL 3:

A tract of land lying in a part of 18th Avenue right of way in Casady's Addition to the City of Council Bluffs, Iowa more particularly described as follows:

Commencing at the Southeast corner of Lot 4, Block 2 of said Casady's Addition and point of beginning of said permanent easement; thence South 81°24'54" East a distance of 147.33 feet; thence North 89°25'47" East a distance of 164.94 feet to the beginning of a tangent circular curve concave southwesterly and having a radius of 507.46 feet and a central angle of 24°00'04"; thence southeasterly, along said curve, an arc length of 212.57 feet and having a chord bearing and distance of South 78°34'11" East, 211.02 feet to a point on the South right of way line of said 18th Avenue and also, being the North line of Block 6 of said Casady's Addition; thence South 89°34'34" West, along said South right of way line and along the North line of said Block 6, a distance of 450.78 feet to the Northwest corner of Lot 12 of said Block 6; thence South 0°36'02" East, along the West line of said Lot 12, a distance of 0.89 feet to a point on a non-tangent curve concave northeasterly and having a radius of 497.46 feet and a central angle of 5°52'58", a radial line through said point bears South 8°37'00" West; thence northwesterly, along said curve, an arc length of 51.08 feet and having a chord bearing and distance of North 78°26'31" West, 51.05 feet to the end of said curve; thence North 45°34'19" West a distance of 79.74 feet to a point on the North right of way line of said 18th Avenue and also, being the South line of said Lot 4; thence North 89°29'39" East, along said North right of way line and along the South line of said Lot 4, a distance of 40.26 feet to the point of beginning of said permanent easement. Said permanent easement contains 21,401 square feet, more or less, or 0.491 of an acre, more or less.

NOTE: The South line of said Lot 4 is assumed to bear North 89°29'39" East for this description.

FURTHER NOTE: Parcel 3 as described above is one and the same parcel of land as described on the Exhibit "A" attached to the Easement for Railroad Right of Way dated March 23, 2000, by and between City of Council Bluffs, Iowa, grantor, and Union Pacific Railroad Company, grantee, recorded on April 4, 2000, in the office of the Recorder of Pottawattamie County, Iowa as Instrument No. 16452, Book 100, Page 45956.

Return To: William Hughes, Esq, Stuart Tinley Law Firm, LLP, Qwest Building, 310 W. Kanesville Blvd., 2nd Floor, P.O. Box 398, Council Bluffs, Iowa 51502-0398

Preparer: Steven J. Woolley, Esq., McGill, Gotsdiner, Workman & Lepp, P.C., L.L.O., 11404 West Dodge Road, Suite 500, Omaha, Nebraska 68154-2584

Taxpayer: Red Giant Oil Company, a Nebraska corporation authorized to do business in Iowa, 1701 South 3rd Street, Council Bluffs, Iowa 51503

QUIT CLAIM DEED

For the consideration of One Dollar and other valuable consideration, Midwest Walnut Company of Iowa, an Iowa corporation, does hereby Quit Claim to Red Giant Oil Company, a Nebraska corporation authorized to do business in Iowa, all of its right, title, interest, estate, claim and demand in the following real estate in Pottawattamie County, Iowa:

See Exhibit "A" attached hereto and incorporated herein by this reference.

Words and phrases herein, including acknowledgement hereof, shall be construed as in the singular or plural number, and as masculine or feminine gender, according to the context.

Dated: _____, 2008

MIDWEST WALNUT COMPANY OF IOWA,
an Iowa corporation, Grantor

By: Gerald W. Keller, Chief Operating Officer

NOTE: Consideration less than \$500.00

STATE OF IOWA)
) ss.
COUNTY OF POTTAWATTAMIE)

This instrument was acknowledged before me on _____, 2008, by Gerald W. Keller as Chief Operating Officer of Midwest Walnut Company of Iowa, an Iowa corporation.

Notary Public

Return To: William Hughes, Esq, Stuart Tinley Law Firm, LLP, Qwest Building, 310 W. Kanesville Blvd.,
2nd Floor, P.O. Box 398, Council Bluffs, Iowa 51502-0398
Preparer: Roger L. Sawatzke, Attorney 229 South Main Street Council Bluffs Iowa 51503
Taxpayer: Red Giant Oil Company, a Nebraska corporation authorized to do business in Iowa, 1701 South
3rd Street, Council Bluffs, Iowa 51503

QUIT CLAIM DEED

For the consideration of One Dollar and other valuable consideration, Union Pacific Railroad Company, a Delaware corporation, does hereby Quit Claim to Red Giant Oil Company, a Nebraska corporation authorized to do business in Iowa, all of its right, title, interest, estate, claim and demand in the following easements and real estate in Pottawattamie County, Iowa (collectively, the "Property"):

1. Easement Deed dated December 10, 1999, by and between Midwest Walnut Company, grantor, and Union Pacific Railroad Company, grantee, recorded on September 20, 2000, in the office of the Recorder of Pottawattamie County, Iowa at Book 101, Page 13179;
2. Easement for Railroad Right of Way dated March 23, 2000, by and between City of Council Bluffs, Iowa, grantor and Union Pacific Railroad Company, grantee, recorded on April 4, 2000, in the office of the Recorder of Pottawattamie County, Iowa as Instrument No. 16452, Book 100, Page 45956; and
3. See Exhibit "A" attached hereto and incorporated herein by this reference.

Subject to the conditions below, Red Giant Oil Company ("Red Giant") shall grant and Union Pacific Railroad Company ("UP") shall retain a PERPETUAL, EXCLUSIVE EASEMENT in, on, under, over and through all of the Property, for purposes of conducting rail freight rail operations and otherwise to fulfill UP's obligations as a common carrier railroad under applicable laws and regulations (the "Railroad Easement"). UP and its lessees, licensees, successors and assigns, have the right to use the Railroad Easement to operate, use, construct, reconstruct, maintain, repair, relocate and/or remove existing and/or future railroad, rail and railroad-related equipment, facilities and transportation systems necessary for and related to freight rail operations. UP (and/or UP's lessees, licensees, successors and assigns) is entitled to all revenues derived from all current and future agreements to which UP (and/or UP's lessees, licensees, successors and assigns) is a party affecting freight rail operations on the Property. No party, including UP and Red Giant, shall utilize the Rail Easement to conduct rail passenger services.

In the event that the Surface Transportation Board (or any successor agency) grants authority for UP to abandon all of its rail services on the Property, the Railroad Easement may be discontinued by either UP or Red Giant. If the Surface Transportation Board (or any successor agency) issues a Certificate of Interim Trial Use or Abandonment or Notice of Interim Trial Use or Abandonment with respect to the Property, the Railroad Easement will become subject to such Certificate or Notice. Upon the termination of the Railroad Easement, UP shall, at the written request and expense of Red Giant, execute and deliver to Red Giant a recordable document terminating and quitclaiming to Red Giant all of UP's right, title and interest in and to the Railroad Easement. Upon any termination of the Railroad Easement, any railroad track or track appurtenances on the Property shall vest in Red Giant in their existing condition. Any railroad track and track appurtenances vesting in Red Giant shall be deemed to be without warranty or representation, oral or written, express or implied, with respect thereto.

Words and phrases herein, including acknowledgement hereof, shall be construed as in the singular or plural number, and as masculine or feminine gender, according to the context.

Dated: _____, 2008

Union Pacific Railroad Company, a Delaware
Corporation, Grantor

By: _____
Tony K. Love, Assistant Vice President
Real Estate Department

NOTE: Consideration less than \$500.00

STATE OF NEBRASKA)
) ss.

COUNTY OF DOUGLAS)

This instrument was acknowledged before me on _____, 2008, by Tony K. Love, Assistant Vice President, Real Estate Department of Union Pacific Railroad Company, a Delaware corporation, Grantor.

Notary Public in and for the State of Nebraska

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Preparer: Roger L. Sawatzke, Attorney 229 South Main Street Council Bluffs Iowa 51503
Taxpayer: Red Giant Oil Company, a Nebraska corporation authorized to do business in Iowa, 1701 South
3rd Street, Council Bluffs, Iowa 51503

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interest in and to the Railroad Easement. Upon any termination of the Railroad Easement, any railroad track or track appurtenances on the Property shall vest in Red Giant in their existing condition. Any railroad track and track appurtenances vesting in Red Giant shall be deemed to be without warranty or representation, oral or written, express or implied, with respect thereto.

Words and phrases herein, including acknowledgement hereof, shall be construed as in the singular or plural number, and as masculine or feminine gender, according to the context.

Dated: _____, 2008

Union Pacific Railroad Company, a Delaware
Corporation, Grantor

By: _____
Tony K. Love, Assistant Vice President
Real Estate Department

NOTE: Consideration less than \$500.00

STATE OF NEBRASKA)
) ss.

COUNTY OF DOUGLAS)

This instrument was acknowledged before me on _____, 2008, by Tony K. Love, Assistant Vice President, Real Estate Department of Union Pacific Railroad Company, a Delaware corporation, Grantor.

Notary Public in and for the State of Nebraska